



Eric Gonzalez
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ADA AISHWARYA SHESH
Assistant District Attorney

JUNE 29, 2021



Re:



In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: MARTIN, DAMON

MOS TAX: 920558

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. In addition to any information provided below, disciplinary information regarding this officer may exist online at the following websites: <https://www1.nyc.gov/site/ccrb/policy/MOS-records.page>, <https://nypdonline.org/link/13>, and <https://www.50-a.org>. The People make no representation regarding the accuracy of any information contained on these websites. In addition, the People have provided all lawsuits known to the People through NYPD documents, the NYC Law Department's public website of civil suits filed against officers (<https://www1.nyc.gov/site/law/public-resources/nyc-administrative-code-7-114.page>), and orally relayed to the People by officers. Please note that additional cases may or may not exist on the following public websites: <https://pacer.uscourts.gov/>, <https://iapps.courts.state.ny.us/webcivil/FCASMain>; and <https://iapps.courts.state.ny.us/nyscef/Login>. The People reserve the right to object to the use or introduction of any or all disclosures provided below and any other potential impeachment information.

Disclosure # 1:

MOS MARTIN PLED GUILTY TO THE FOLLOWING DEPARTMENTAL DISCIPLINARY CHARGES:

1. MOS MARTIN, ASSIGNED TO THE 67TH PRECINCT, WHILE ON DUTY ON SEPTEMBER 3, 2004, AT A LOCATION KNOWN TO THIS DEPARTMENT, KINGS COUNTY, DID WRONGFULLY ENGAGE IN CONDUCT PREJUDICIAL TO THE GOOD ORDER, EFFICIENCY AND DISCIPLINE OF THE DEPARTMENT, TO WIT: MOS MARTIN FAILED TO SAFEGUARD A PRISONER KNOWN TO THIS DEPARTMENT, RESULTING IN THE LOSS OF SAID PRISONER.
 2. MOS MARTIN ASSIGNED AS INDICATED IN SPEC.#1, WHILE ON DUTY, AT THE TIME, DATE AND PLACE INDICATED IN SPEC.#1, AFTER LOSING SAID PRISONER DID FAIL TO REPORT IMMEDIATELY TO THE PATROL SUPERVISOR AND THE PLATOON COMMANDER ANY UNUSUAL CRIME, OCCURRENCE OR CONDITION, AS REQUIRED.
- PENALTY: THIRTY-TWO (32) DAYS SUSPENSION.

Disclosure # 2:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION, DATED 01-07-10, AGAINST MOS MARTIN:
ALLEGATION: MEMOBOOK-INCOMPLETE
ACTION TAKEN: LETTER OF INSTRUCTION
CLOSED: 7/30/11

Disclosure # 3:

MOS MARTIN WAS FOUND GUILTY AFTER DEPARTMENTAL TRIAL OF THE FOLLOWING ALLEGATIONS ARISING FROM AN INCIDENT OCCURRING IN THE KINGS COUNTY ON 10/4/08, ARISING FROM A CCRB INVESTIGATION:

1. DID ENGAGE IN CONDUCT PREJUDICIAL TO THE GOOD ORDER, EFFICIENCY AND DISCIPLINE OF THE NEW YORK CITY POLICE DEPARTMENT IN THAT SAID SERGEANT DID ABUSE HIS AUTHORITY AS A MEMBER OF THE NEW YORK CITY POLICE DEPARTMENT BY AUTHORIZING A POLICE OFFICER TO ISSUE A SUMMONS TO A PERSON KNOWN TO THE DEPARTMENT WITHOUT SUFFICIENT LEGAL BASIS FOR SAID SUMMONS.

2. DID ABUSE HIS AUTHORITY AS A MEMBER OF THE NEW YORK CITY POLICE DEPARTMENT IN THAT SAID SERGEANT CONDUCTED A STRIP SEARCH OF A PERSON KNOWN TO THE DEPARTMENT, BUT SAID SERGEANT FAILED FOLLOW PROPER STRIP SEARCH PROCEDURES: TO WIT, RESPONDENT DID NOT RECEIVE AUTHORIZATION FROM THE DESK OFFICER TO CONDUCT SAID STRIP SEARCH, AND RESPONDENT DID NOT NOTIFY THE DESK OFFICER THAT SAID STRIP SEARCH WAS BEING CONDUCTED.

3. MADE INSUFFICIENT NOTATIONS IN HIS ACTIVITY LOG FOR HIS TOUR ON THAT DATE.

4. DID ENGAGE IN CONDUCT PREJUDICIAL TO THE GOOD ORDER, EFFICIENCY AND DISCIPLINE OF THE DEPT, IN THAT SAID SERGEANT DID ABUSE HIS AUTHORITY AS A MEMBER OF THE NYPD BY TRANSPORTING SAID PERSON KNOWN TO THE DEPARTMENT TO THE 73RD PRECINCT STATIONHOUSE, WITHOUT POLICE NECESSITY.

PENALTY: FORFEITURE OF 15 VACATION DAYS.

SEE ATTACHED CCRB CLOSING REPORT.

Disclosure # 4:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION, DATED 01-20-11, AGAINST MOS MARTIN:

ALLEGATION: MEMOBOOK INCOMPLETE

ACTION TAKEN: 'B' CD ISSUED

CLOSED: 10/24/11

Disclosure # 5:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION, DATED 12-6-13, AGAINST MOS MARTIN:

ALLEGATION: OTHER DEPARTMENT RULES (FAILURE TO MAKE PROPER NOTIFICATIONS ON THE SALE OF HIS FIREARM

ACTION TAKEN: A CD ISSUED

CASE CLOSED: 06/24/14

Disclosure # 6:

THE NYPD ENTERED A DISPOSITION OF MINOR PROCEDURAL VIOLATION, ARISING FROM 6-8-17, AGAINST MOS MARTIN FOR THE FOLLOWING ALLEGATIONS:

OTHER DEPT RULES/PROCEDURES VIOLATION -MINOR PROCEDURAL VIOLATION

MEMOBOOK INCOMPLETE/IMPROPER -MINOR PROCEDURAL VIOLATION

CLOSED: 5/29/18

Disclosure # 7:

THE NYPD ENTERED A DISPOSITION OF MINOR PROCEDURAL VIOLATION, ARISING FROM 5-17-16, AGAINST MOS MARTIN FOR THE FOLLOWING ALLEGATIONS:

MEMOBOOK INCOMPLETE/IMPROPER - MPV

CASE CLOSED: 08/07/17

Disclosure # 8:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATIONS, DATED 9-11-18, AGAINST MOS MARTIN:

ALLEGATION : 1. INVOICE DISCREPANCY - LAB - CONTROLLED SUBSTANCE

CLOSED DATE : 2018-11-09

ACTION TAKEN : VERBAL OF INSTRUCTIONS

Disclosure # 9 :

MOS MARTIN PLEAD GUILTY TO THE FOLLOWING NYPD DEPARTMENTAL CHARGES AND SPECIFICATIONS, ARISING FROM CCRB CASE 201804938:

1. SERGEANT DAMON MARTIN, ON OR ABOUT JUNE 12, 2018, AT APPROXIMATELY 1110, WHILE ASSIGNED TO INT CIS AND ON DUTY, INSIDE AN APARTMENT IN THE VICINITY OF CRYSTAL STREET, KINGS COUNTY, ABUSED HIS AUTHORITY AS A MEMBER OF THE NEW YORK CITY POLICE DEPARTMENT, IN THAT HE SEARCHED SAID APARTMENT WITHOUT SUFFICIENT LEGAL AUTHORITY.

*SEE CCRB CLOSING REPORT, ATTACHED HERETO.

ACTION TAKEN: 6 VACATION DAYS

Disclosure # 10:

MOS Martin is a named defendant in the civil actions:

- Rodney Watt v. City of NY, Et Al, 12CV0016, filed in the Eastern District of NY.
- Andre Beaton v. City of NY, Et Al, 12CV1303, filed in the Eastern District of NY.
- Fitzgerald Brown v. City of NY, Et Al, 13CV04946, filed in the Eastern District of NY.

Disclosure # 11:

THE NYPD ISSUED A MINOR PROCEDURAL VIOLATION AGAINST MOS MARTIN DATED 8/12/19:

1. OTHER DEPT RULES/PROCEDURES VIOLATION

CASE CLOSED: 03/03/2020

Disclosure # 12:

In October and November of 2019, JHO Goldberg presided over a *Huntley* hearing for Indictment Number 357/2019. On January 8, 2020, Judge Jane Tully adopted the findings of fact and recommendation that JHO Goldberg issued in his Report dated December 4, 2019. In his Report, which recommended the suppression of the defendant's two statements to law enforcement, JHO Goldberg stated that, "Given [] Sergeant [Martin's] past history of numerous claims of misconduct being made against him, the sergeant's testimony that he 'assumed' his interactions were being recorded on a body camera, even though he sent the only two officers who were wearing activated body cameras out of the room, is not credible".

Indictment No. 357/2019 is currently pending.

JHO Goldberg's Report is attached hereto.

Disclosure # 13:

THE NYPD SUBSTANTIATED THE FOLLOWING ALLEGATIONS AGAINST MOS MARTIN DATED 3/3/20:

1. REPORT INCOMPLETE/INACCURATE - PROPERTY CLERK INVOICE

CLOSED DATE : 2020-03-20

ACTION TAKEN : VERBAL INSTRUCTIONS

BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH MAY 7, 2021, THE PEOPLE ARE AWARE OF THE FOLLOWING CCRB SUBSTANTIATED AND/OR PENDING ALLEGATIONS AGAINST THIS OFFICER:

Disclosure # 14:

CCRB CASE: 200613930

Report Date: 10/19/2006

Incident Date: 10/18/2006

CCRB SUBSTANTIATED ALLEGATIONS:

1. Abuse - Premises entered and/or searched
2. Abuse - Search (of person) Substantiated (Charges) Not Guilty -

NYPD Disposition: Not guilty on both allegations:

Disclosure # 15:

CCRB CASE: 200616696

Report Date: 12/14/2006

Incident Date: 12/14/2006

CCRB SUBSTANTIATED ALLEGATION: Abuse - Question and/or stop
NYPD Disposition: No Disciplinary Action

Disclosure # 16:

CCRB CASE: 200814508

Report Date: 10/07/2008

Incident Date: 10/04/2008

CCRB SUBSTANTIATED ALLEGATIONS:

1. Abuse - Retaliatory arrest
2. Abuse - Stop
3. Abuse - Strip-searched
4. Abuse - Threat of force (verbal or physical)

NYPD Disposition: Guilty on allegations 1 and 3; no disciplinary action on allegations # 2 and # 4.

NYPD Penalty: Forfeiture of 15 vacation days.

Disclosure # 17:

CCRB CASE: 201004238

Report Date: 03/30/2010

Incident Date: 03/24/2010

OTHER MISCONDUCT NOTED:

1. OMN - Failure to prepare a memo book entry
2. OMN - Failure to produce stop and frisk report

Disclosure # 18:

CCRB CASE: 201804938

Report Date: 06/20/2018

Incident Date: 06/12/2018

CCRB SUBSTANTIATED ALLEGATION: Abuse - Search of Premises

Disclosure # 19 (PENDING):

CCRB CASE: 201901320

Report Date: 02/12/2019

Incident Date: 02/07/2019

PENDING CCRB ALLEGATIONS:

1. Force - Physical force
2. Force - Physical force
3. Abuse - Entry of Premises
4. Abuse - Threat of arrest

Disclosure # 20 (PENDING):

CCRB CASE: 201910652

Report Date: 12/12/2019

Incident Date: 11/20/2018

PENDING CCRB ALLEGATIONS:

1. Abuse - Entry of Premises
2. Abuse - Refusal to show search warrant
3. Abuse - Search of Premises

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District Attorney
Kings County

INCIDENT DATE: 10/4/2008:

Allegation A: Sgt. Martin Stopped [REDACTED]

According to Terry v. Ohio, 392 U.S.; 20 L. Ed. 2d 889 [1968], a police officer may execute a forcible stop of a particular individual when "he reasonably suspects that such a person is committing, has committed or is about to commit a crime. Reasonable suspicion must be based upon those specific and articulable facts which led to the stop.

Although Sgt. Martin initiated the stop because he allegedly observed [REDACTED] in possession of marijuana, the investigation determined it was unlikely Sgt. Martin made such an observation based on his vantage point. Secondly, none of the officers made any attempts to recover the marijuana at the location of the stop. The investigation thus determined that Sgt. Martin lacked reasonable suspicion to stop [REDACTED]. Based on the foregoing, it is recommended that Allegation A be closed, substantiated.

Allegation B: Sgt. Martin Threatened [REDACTED] with the Use of Force (Taser)

As explained above, the investigation has determined that Sgt. Martin did possess a taser and initiated a spark-test while [REDACTED] was in police custody. The circumstances under which it was used and activated, however, are less clear. Sgt. Martin was not sure whether he activated the taser, and so he could offer no insight as to why he may have done so. Being that [REDACTED] was handcuffed and he wasn't being violent or threatening in any way, there was no reason for Sgt. Martin to initiate a spark-test of the taser. Sgt. Martin's actions don't appear to have served any legitimate function other than to intimidate [REDACTED]. Therefore, it is recommended that Allegation B be closed, substantiated.

Allegation H: Sgt. Martin Strip-searched [REDACTED]

It is undisputed that Sgt. Martin strip-searched [REDACTED].

According to Finest message dated 5/13/04 re Strip Searches and Patrol Guide 208-05, a "strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing, in such a manner that they have not been discovered by either a frisk/field or other search at a police facility....A strip search will be authorized by a supervisor only when an arresting officer has articulated a reasonable suspicion, beyond probable cause, for the arrest."

Although the arresting officer, [REDACTED] did not recall the incident, Sgt. Martin was the officer who directed the arrest. The investigation has already determined that he did not conduct a field search or search of the surrounding area for the marijuana and he did not have probable cause for the arrest. Inasmuch as these are two requirements to justify a strip search, Sgt. Martin lacked the justification to perform a strip search of [REDACTED]. Therefore, it is recommended that Allegation H be closed, substantiated.

INCIDENT DATE: 06/12/2018:

Allegation (B) Abuse of Authority: Sergeant Damon Martin searched [REDACTED] Crystal Street, Apt. [REDACTED] in Brooklyn.

As seen in the excerpt of [REDACTED] body-worn camera footage, embedded below (Board Review 02), Police Officer [REDACTED] is seen entering the apartment behind Police Officer [REDACTED]. Police Officer [REDACTED] walks towards the rear bedroom and says "221" (which is the New York State Penal Law code for marijuana), and then tells the other officers that he found marijuana in plain view. An officer says the 911 caller was on her way to work and refuses to cooperate. Police Officer [REDACTED] first video ends, and then his second video begins with him walking towards the rear bedroom, where there was a closet with no door. Sergeant Martin asks for a flashlight, and then uses the flashlight to examine the top shelf of this closet. This portion of the incident occurs prior to the search warrant being obtained.

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[REDACTED] were both in the living room when this took place, and they were unable to see what Sergeant Martin was doing in the bedroom.

Upon being shown Police Officer [REDACTED] video, Sergeant Martin stated that he believed that he was permitted to visually inspect the top shelf of the closet with a flashlight as long as he did not "go through stuff." Sergeant Martin believed that the top shelf was in plain view because it was "open," and that using a flashlight to illuminate the top shelf is not considered a "search." Sergeant Martin believed that he needed make sure every "plain view" area was inspected prior to calling the Kings County District Attorney's office so the officers could report what they could find in plain view prior to swearing out the search warrant. He did not illuminate the shelf for any other reason.

In Coolidge v. New Hampshire, 403 U.S. 443 (1971), the Supreme Court of the United States wrote, "the 'plain view' doctrine has been applied where a police officer is not searching for evidence against the accused, but nonetheless comes across an incriminating object." In Brigham City v. Stuart, 547 U.S. 398 (2006), citing Mincey v. Arizona, 437 U.S. 385 (1978), the Supreme Court of the United States wrote, "Warrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment" (Board Review 10).

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Sergeant Martin stated that his intent in examining the top shelf of the closet with the assistance of a flashlight was to ascertain the contents of the shelf in order to report to the judge what he and the other officers were able to find in the apartment, in order to then obtain a search warrant. Therefore, by his own admission, Sergeant Martin's examination of the closet was motivated by an intent to search for evidence, which violates the definition and spirit of the plain view doctrine set forth in Coolidge v. New Hampshire, which holds that the plain view doctrine applies when an officer is not searching for evidence but nevertheless observes an incriminating object.

The officers had not yet obtained their search warrant when Sergeant Martin searched the closet, and neither Sergeant Martin nor any other officer interviewed cited any exigency that would have merited a warrantless search of the closet. Numerous police officers were at the scene and watched over Mr. [REDACTED] in the living room, while several other officers and no civilians were in the bedroom with Sergeant Martin. As such, the situation inside Apt. [REDACTED] was under the officers' control, and no exigent circumstances existed that merited Sergeant Martin's warrantless search of the closet.

Given the investigation's determination that Sergeant Martin searched the top shelf of Mr. [REDACTED] closet, which was not in plain view, with a flashlight and without a warrant or exigent circumstances, it is recommended that **Allegation B be substantiated.**